TAN KOK CHUAN & ANOR

v.

LIEW NAM FOONG

HIGH COURT MALAYA, JOHOR BAHRU
ABDUL MALIK ISHAK J
[ORIGINATING SUMMONS NO: 24-1436-1998]
28 JANUARY 2000

LAND LAW: *Caveat - Removal, application for - Caveats entered by defendant over deceased wife's properties - Deceased bequeathed properties to plaintiff/brother by way of will in her lifetime - Whether deceased's subsequent marriage to defendant revoked will - Whether defendant entitled to properties under Inheritance (Family Provision) Act 1971 - Letter of authority made by deceased after marriage - Whether revived last will - Whether clear and unambiguous - Whether deceased intended plaintiff to be sole beneficiary of properties - Forgery - Whether proven - Whether entry of caveats justified*

The plaintiff was the brother of the deceased. In her lifetime, the deceased who had inherited four properties from her father, had devised and bequeathed the said properties to the plaintiff in a will ('the last will'). After her marriage to the defendant, the deceased made a letter of authority reviving the last will and reiterating that the said properties were for the sole benefit of the plaintiff. The defendant came to know of the said properties some time after the death of the deceased and lodged four private caveats over them. Hence, the instant application by the plaintiff for the removal of the said caveats.

The defendant claimed that: (i) he and his two children by the deceased were entitled to the estate of the deceased under the Inheritance (Family Provision) Act 1971; (ii) the letter of authority made by the deceased after her marriage to the defendant contained a forged signature of the deceased and that it was not a codicil; and (iii) that s. 12 of the Wills Act 1959 would automatically revoke the last will following the deceased's marriage to the defendant.

Held:

[1] As the sole beneficiary and the executor of the estate of the deceased and having taken out the grant of probate, the plaintiff was an aggrieved person and was entitled to remove the caveats on the properties. The plaintiff also had the necessary *locus standi*.

[2] There was evidence to show that the defendant had since remarried. Pursuant to s. 3(2)(a) of the Inheritance (Family Provision) Act 1971, the maintenance of the defendant terminated upon his re-marriage. Further, by virtue of s. 4 of the said Act, the defendant was out of time to make any application for maintenance.

[3] The letter of authority specifically appointed the plaintiff as the executor and trustee; referred to and revived the last will; reiterated that the said properties were for the sole benefit of the plaintiff; and mentioned that that was the "last will" at the signature clause thereto. Furthermore, the letter of authority was duly signed by the deceased in the presence of her two siblings.

[4] The affidavits of both the deceased's siblings demolished the allegation that the letter of authority contained a forged signature of the deceased. The letter of authority was a codicil because under s. 2 of the Wills Act 1959, a will must include a codicil.

[5] It was obvious that the marriage of the deceased with the defendant did not alter the stand of the deceased at all. She devised and bequeathed the said properties to no one except the plaintiff. The language employed in the letter of authority was very clear and ambiguous.

[6] The last will and the letter of authority must be examined in its entirety. From those documents, the intention of the parties could readily be discovered by looking at the expressions which the parties employed. The expressions used in the said two documents were simple and straightforward. The court must not substitute its own ideas of what the parties meant by supplying words into the document. The clear unambiguous words employed in the letter of authority clearly showed that it was meant to revive the last will and that it was the intention of the deceased that the plaintiff be the beneficiary of the said properties.

[7] The purportedly forged signature in the letter of authority was not proven by an expert witness's evidence and it could be explained away by comparing the signature of the deceased in the letter of authority with that of the marriage certificate of the deceased to the defendant which was the same.

[7a] The defendant did not discharge the burden of proving fraud or forgery. Moreover, the issue of fraud was not alluded to in Form 19B (application for entry of a private caveat under the National Land Code 1965) to support the defendant's alleged caveatable interest. The

defendant relied on affidavit evidence to establish fraud but in an application for the removal of a private caveat, the court must be guided by what was alluded to in Form 19B.

[8] Section 16 of the Wills Act 1959 provides for the revival of revoked wills. Since the last will was revived by the letter of authority, the defendant's argument that the last will was revoked by his marriage to the deceased was entirely without merit. Even if the last will was not revived by the letter of authority, the letter of authority was capable of standing on its own as it clearly set out the name of the beneficiary and the subject matter of the estate.

[9] The defendant's claim in Form 19B was totally untenable and unsustainable because the letter of authority was executed after the deceased's marriage to the defendant. As the sole beneficiary of the deceased's estate, the plaintiff had a right to wind up the deceased's estate in compliance with her intention in the letter of authority. Thus, the wrongful private caveats on the four properties ought to be removed forthwith to allow the plaintiff to wind up the deceased's estate.

[10] There were no serious questions to be tried. As such, the issue of the balance of justice did not arise at all.

[11] Apart from the above, there was inordinate and inexcusable delay on the facts of the present case. The delay must be construed adversely against the defendant. The private caveats must be removed forthwith.

[Judgment for the plaintiffs.]

Case(s) referred to:

Bank of Tokyo v. Mohd Zaini bin Arshad (Maria Pragasam, Intervener) [1991] 3 MLJ 50 ***(refd)***
Beaumont v. Marquis of Salisbury [1854] 19 Beav 198 ***(refd)***
Damodaran v. Vasudeva [1974] 1 MLJ 128 ***(refd)***
Chin Cheng Hong v. Hameed & Ors [1954] MLJ 169 ***(refd)***
Chor Phaik Har v. Farlim Properties Sdn Bhd [1994] 3 MLJ 345 ***(refd)***
Chua Hee Hang v. QBE Supreme Insurance Bhd [1990] 1 MLJ 480 ***(refd)***
Goh Paik Swan v. Ng Choo Lum [1996] 3 MLJ 437 ***(refd)***
Guan Wee Keang v. Gan Ah Ter [1986] 1 CLJ 557 ***(refd)***
Haroon v. Nik Mah [1951] MLJ 209 ***(refd)***
Hasan bin Sui & Anor v. Ban Ling Sdn Bhd & Ors [1992] 3 CLJ 1428 ***(refd)***
Ismail bin Mohamad v. Haji Yahya & Ors [1988] 2 MLJ 185 ***(refd)***
Jit Kaur v. Parl Singh [1974] 2 MLJ 199 ***(refd)***
Ker Chee Chuan v. Katlyn Enterprise (M) Sdn Bhd [1991] 1 MLJ 98 ***(refd)***
Kidder v. West [1684] 3 Lev 167 ***(refd)***
Kumpulan Sua Betong Sdn Bhd v. Dataran Segar Sdn Bhd [1992] 1 MLJ 263 ***(refd)***

Lai Chon Foo @ Lai Chan Foo v. KN Wong (M) Sdn Bhd [1994] 1 CLJ 523 ***(refd)***
Lee Brothers Plantation & Realty (M) Sdn Bhd v. Lee Yeow Teng [1991] 1 CLJ 133 ***(refd)***
Lew Choon Chan v. Pentadbir Tanah Daerah & Anor [1992] 1 CLJ 687 ***(refd)***
Lindsay Petroleum Co v. Hurd [1874] LR 5 PC 221 ***(refd)***
Ling Tee Huah Credit & Leasing Sdn Bhd & Ors v. Lii Tat Credit Mortgage Sdn Bhd & Anor [1990] 1 MLJ 58 ***(refd)***
Macon Engineers Sdn Bhd v. Goh Hooi Yin [1976] 2 MLJ 53 ***(refd)***
Malayan United Bank Bhd v. Ngu Ding Yiing & Anor [1992] 3 CLJ 1460 ***(refd)***
Mercantile Bank Ltd v. Official Assignee of the Property of How Han Teh [1969] 2 MLJ 196 ***(refd)***
Monypenny v. Monypenny [1861] 9 HLC 114 ***(refd)***
N. Vangedaselam v. Mahadevan & Anor [1976] 2 MLJ 161 ***(refd)***
Neo Son Tong Realty Sdn Bhd v. Kee Ba Tee @ Kee Seng Kiang [1987] 1 CLJ 207 ***(refd)***
Ng Kheng Yeow v. Chiah Ah Foo & Ors [1987] 2 MLJ 330 ***(refd)***
Ong Chat Pang & Anor v. Valliappa Chettiar [1971] 1 MLJ 224 ***(refd)***
Paya Terubong Estates Sdn Bhd v. Pusaka Warisan Sdn Bhd [1998] 2 CLJ 909 ***(refd)***
Plimmer Bros. v. St. Maur [1906] 26 NZLR 294 ***(refd)***
R v. Nicholson [1899] 2 QB 455 ***(refd)***
R v. Russell, ex parte Beaverbrook Newspapers Ltd [1969] 1 QB 342 ***(refd)***
R v. Secretary of State for Social Services, ex p Child Poverty Action Group [1990] 2 QB 540 ***(refd)***
R v. Surrey Justices [1870] LR 5 QB 466 ***(refd)***
R v. Taunton St. Mary's [1815] 3 M & S 465 ***(refd)***
RAP Nathan v. Haji Abdul Rahman bin Haji Yusoff & Ors [1980] 1 MLJ 248 ***(refd)***
Re Alcock deceased [1945] 1 Ch 264 ***(refd)***
Re Meredith, ex p. Chick [1879] 11 Ch D 731 ***(refd)***
Re James's Will Trusts [1962] Ch 226 ***(refd)***
Registrar of Titles, Johore v. Temenggong Securities Ltd [1976] 2 MLJ 44 ***(refd)***
*Saminathan v. Pappa [1981] 1 MLJ 121****(refd)***
Smith v. Lucas [1881] 18 Ch D 531 ***(refd)***
Smith v. Packhurst [1742] 3 Atk 135 ***(refd)***
Simpson v. Foxon [1907] P 54 ***(refd)***
Sing Lian Express Sdn Bhd v. Soh Kim Tee [1974] 2 MLJ 24 ***(refd)***
Standard Chartered Bank v. Yap Sing Yoke & Ors [1989] 2 MLJ 49 ***(refd)***
Su Meu Ging v. Philip Yong Khiam Poon & Ors and other appeals [1988] 3 MLJ 86 ***(refd)***
Tai Lee Finance Co Sdn Bhd v. Official Assignee & Ors [1983] 1 MLJ 81 ***(refd)***
Tan Heng Poh v. Tan Boon Thong & Ors [1992] 2 MLJ 1 ***(refd)***
Tan Suan Heoh v. Lim Teck Ming & Ors [1987] 2 MLJ 466 ***(refd)***
Teo Ai Choo v. Leong Sze Hian [1982] 2 MLJ 12 ***(refd)***
United Malayan Banking Corp Bhd v. Goh Tuan Laye & Ors [1976] 1 MLJ 169 ***(refd)***

Wazuraiyah bte Mohamed v. Megat Najmuddin & Ors [1986] 2 MLJ 379 ***(refd)***
Woon Kim Poh v. Sa'amah bte Hj Kasim [1987] 1 MLJ 400 ***(refd)***
Wu Shu Chen (Sole executrix of the estate of Goh Keng How, deceased) & Anor v. Raja Zainal Abidin bin Raja Hussin [1997] 2 MLJ 487 ***(refd)***

Legislation referred to:
Alehouse Act 1828, s. 14
Inheritance (Family Provision) Act 1971, ss. 3(2)(a), 4, 5
Licencing Act 1872, s. 40
National Land Code 1965, ss. 323(1)(c), 324(1), 327(1)
Wills Act 1959, ss. 2(1), 5(1), (2), 12, 16

For the plaintiffs - Ong Peck Ha; M/s Ong & Ong
For the defendants - Wong Lock Heng; M/s LH Wong & Co

Reported by Usha Thiagarajah

JUDGMENT

Abdul Malik Ishak J:

Background Facts

This was an application by the plaintiffs in encl. 3 by way of an originating summons for the following prayers:

(A) that the four private caveats lodged by the defendant on 8 June 1995 over the undivided half share belonging to the estate of Tan Sai Geok (f), deceased, namely:

(a) G.M. 182 Lot 95 Mukim Plentong via Presentation no: 772/95 Jilid no: 17 folio no: 33;

(b) G.M.183 Lot 100 Mukim Plentong via Presentation no: 773/95 Jilid no: 17 folio no: 34;

(c) G.M. 184 Lot 102 Mukim Plentong via Presentation no: 774/95 Jilid no: 17 folio no: 35;

(d) G.M. 193 Lot 101 Mukim Plentong via Presentation no: 775/95 Jilid no: 17 folio no: 36;

may be struck off.

(B) costs of this application;

(C) damages for wrongful caveating;

(D) such further and/or other relief as the Honourable Court may grant/ask; and

(E) liberty to apply.

There were seven affidavits in support and they were marked as encls. 2, 6, 7, 8, 10, 11 and 13. The defendant's replies can be seen in encls. 9 and 12.

The sequence of events may be summarised as follows:

(1) 4 March 1984: The deceased Tan Sai Geok (f) inherited half undivided share of the four properties listed above (hereinafter referred to as the "four properties") from her late father by the name of Tan Poh Wah @ Tan Poh Hua and the same were duly registered in the name of the deceased Tan Sai Geok (f) (see the land titles exhibited as exh. "TKC 1" to "TKC 4" of encl. 2).

(2) 16 January 1985: The deceased Tan Sai Geok (f) made her last will as seen at exh. "TKC 6" of encl. 2 naming the plaintiff – Tan Kok Chuan, the executor and sole beneficiary thereof.

(3) 24 April 1986: The defendant by the name of Liew Nam Foong married the deceased Tan Sai Geok (f) by registration as seen in exh. "TKC 13A" of encl. 6 where the marriage certificate was exhibited for everyone to see.

(4) 20 February 1989: The deceased Tan Sai Geok (f) made her letter of authority appointing the plaintiff Tan Kok Chuan as executor, trustee and sole beneficiary and this can clearly be seen in the document marked as exh. "TKC 7" of encl. 2.

(5) 21 May 1989: Tan Sai Geok (f), the deceased in question passed away – a victim of heart attack as per the death certificate exhibited as exh. "TKC 5" of encl. 2. She died at the age of 39.

(6) 1 August 1994: The petition for the grant of probate was filed by the plaintiff Tan Kok Chuan in respect of the deceased Tan Sai Geok (f) *vide* probate no: 32-31-1994 in the High Court of Johor Bahru as seen in exh. "LNF 6" of encl. 9. It was deposed at para. 6(v) of encl. 9 that the defendant's previous solicitors Messrs CK Tan had caused a search to be made and found that probate was given to the plaintiff Tan Kok Chuan on 16 November 1994.

(7) 8 June 1995: By way of Form 19B to s. 323 of the National Land Code 1965 ("NLC"), the defendant filed four private caveats pertaining to the half undivided share on each of the four properties and this can clearly be seen at exhs. "TKC 8" to "TKC 11" of encl. 2.

(8) 26 September 1995: The defendant filed an originating motion no: 25-48-95 at the Johor Bahru High Court to strike out the petition for the grant of probate that was filed by the plaintiff Tan Kok Chuan *vide* probate no: 32-31-1994.

(9) 28 March 1996: The plaintiff Tan Kok Chuan through his present solicitors Messrs Ong & Ong filed a summons for leave to enter conditional appearance to strike out the defendant's originating motion no: 25-48-95 and the summons was heard on 24 April 1996. These averments can be seen at para. 8(iii) of the defendant's affidavit in encl. 9.

(10) 5 July 1996: The plaintiff Tan Kok Chuan through his present solicitors Messrs Ong & Ong filed a further affidavit enclosing the letter of authority alluded to earlier and this can be seen by way of an averment at para. 8(iv) of the defendant's affidavit in encl. 9.

(11) 5 November 1996: The defendant withdrew the originating motion no: 25-48-95 that was filed in the Johor Bahru High Court.

(12) 28 July 1997: The grant of probate in respect of the deceased Tan Sai Geok's estate was granted to the plaintiff as demonstrated in encl. 2 of exh. "TKC-5A". At paras. 9 (iii) and 9 (iv) of the defendant's affidavit in encl. 9 it was averred that probate was granted to the plaintiff after the court heard the petition for probate on 29 January 1997.

(13) 8 September 1997: Messrs Ong & Ong, the solicitors for the plaintiff, wrote a letter to Messrs CK Tan & Co., the former solicitors of the defendant, giving notice to the defendant to remove the four private caveats on the four properties. This very notice can be seen at exh. "TKC 13" of encl. 2.

(14) 13 August 1998: The present originating summons in encl. 3 was filed to remove the four private caveats filed by the defendant on the four properties.

(15) 15 May 1999: The defendant together with Liew San Wei and Liew Wern Chie filed a civil suit in the Johor Bahru High Court against the plaintiffs in an attempt to revoke the grant of probate dated 28 July 1997. A photostat copy of that civil suit was exhibited and marked as exh. "LNF-1" of encl. 12 – the additional affidavit of the defendant.

Locus Standi Of The Plaintiff Tan Kok Chuan

The facts as narrated showed that the plaintiff is the sole beneficiary and executor of the estate of Tan Sai Geok (f), deceased, on the strength of two documents:

(a) the last will dated 16 January 1985; and

(b) the letter of authority dated 20 February 1989.

The plaintiff took out the grant of probate on 28 July 1997 and it was rightly submitted by Mrs. Ong Peck Ha, learned counsel for the plaintiff, that the plaintiff had the *locus standi* to file encl. 3 for the purpose of removing the four private caveats on the four properties. In *Jit Kaur v. Parl Singh* [1974] 2 MLJ 199, Hashim Yeop A Sani J (as he then was) had occasion to deal with an application for the removal of a caveat just like the present case before me. In that case, the applicant applied for an order that the caveat lodged by the respondent against certain land in Klang, Selangor, be removed under s. 327(1) of the NLC. It was alleged that the respondent had no interest in the land and did not have any right to claim title to or any registrable interest in the land. But there was evidence that the respondent in that case was a beneficiary of Gurdial Singh (deceased) who was the original registered proprietor of the land and who had purportedly transferred the land to the applicant. The respondent took out letters of administration to the estate of Gurdial Singh and the respondent was challenging the validity of the transfer of the land. Hashim Yeop A Sani J (as he then was) held that the respondent had shown that he was a person entitled to apply to enter a private caveat under s. 323 of the NLC and, consequently, the application to remove the caveat was dismissed. Using *Jit Kaur*'s case as a leverage and by way of an analogy, it was argued that by a logical extension of the principle enunciated therein (the principle that one who has taken out the letters of administration or the grant of probate in respect of the deceased's estate has a caveatable interest), the plaintiff too must have the *locus standi* to remove the four private caveats on the four properties. I subscribe to this argument as there was merit in it. I cannot envisage a situation where the plaintiff being the sole beneficiary and executor of the estate of Tan Sai Geok (f) and who had taken out the grant of probate would be denied *locus standi* to challenge the lodgement of the four private caveats and seeking for its removal thereof. The question of standing goes to the jurisdiction of the court (*R v. Secretary of State for Social Services ex p. Child Poverty Action Group* [1990] 2 QB 540) and this court has the authority to rule on it.

The plaintiff Tan Kok Chuan was certainly aggrieved by the existence of the four private caveats on the four properties. Mokhtar Sidin JCA speaking for

the Court of Appeal in a well written judgment said in the case of *Wu Shu Chen (Sole executrix of the estate of Goh Keng How, deceased) & Anor v. Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487, 499, the following sage words:

> The Code contains no definition on who is an aggrieved person. To my mind, the word 'aggrieved' must be given its ordinary meaning. To be aggrieved means one is dissatisfied with or adversely affected by a wrongful act of someone. An aggrieved person is therefore a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. The category of aggrieved persons is never closed.

In *RAP Nathan v. Haji Abdul Rahman bin Haji Yusoff & Ors* [1980] 1 MLJ 248, Syed Agil Barakbah J (as he then was) was of the view that the third defendant in that case was a person aggrieved by the existence of the caveat, even though he had transferred the lands to the company, and therefore could make the application to set aside the caveat. The plaintiff Tan Kok Chuan, in the present case, was on firmer ground. As the sole beneficiary and executor of the estate of Tan Sai Geok (f) and having taken out the grant of probate on 28 July 1997, the plaintiff Tan Kok Chuan certainly qualified as an aggrieved person and was entitled and had the necessary *locus standi* to remove the four private caveats on the four properties. This was my judgment and I so hold accordingly.

What is the legal definition of the phrase "*locus standi*?" It denotes a legal capacity to institute proceedings and the term is often used at tandem and interchangeably with phrases like "standing" or "title to sue." The concept of *locus standi* is always limited to an aggrieved person. In *R v. Nicholson* [1899] 2 QB 455, the court there had to deal with the interpretation of s. 14 of the Alehouse Act 1828 and s. 40 of the Licencing Act 1872 against the following facts: where the residents in the neighbourhood of premises for which a licence to operate a public house was granted, sought to have the grant quashed on the ground that no proper notice of the application for the licence was given as required by those statutes. On the issue of standing of the applicants, Vaughn William LJ stated at p. 471 of the report:

> There has been a good deal of argument as to whether the prosecutors are persons who are aggrieved by what has been done. This is not a case in which any statute has said that the persons who apply for the writ should be persons who are aggrieved, but it is a case in which by the practice of the courts it has always been insisted upon that the persons applying should be persons who are aggrieved.

The learned judge then proceeded to lay down the test in order to determine the status of the applicant in these words as seen at p. 472 of the report :

> ... the court will consider whether the interest of the applicant is so small, or his grievance so like that of the rest of Her Majesty's subjects, as to leave no sufficient ground for the issue of the writ.

An aggrieved person must have "a peculiar personal grievance beyond that which affects the public at large" (*R v. Taunton St. Mary's* [1815] 3 M & S 465 at p. 472 as applied in *R v. Surrey Justices* [1870] LR 5 QB 466 at p. 474 and in *R v. Nicholson (supra)* at p. 471 thereof). The scope of an "aggrieved person" can never be drawn. It extends far and wide – beyond the shores of Malaysia. It depends on the facts of each case. The case of *R v. Russell, ex parte Beaverbrook Newspapers Ltd* [1969] 1 QB 342 is a case in point. In that case a newspaper proprietor was held to be a "person aggrieved" so as to have standing to apply for *certiorari* to quash a magistrate's order partially lifting a statutory ban on the publication of written reports of certain committal proceedings in England. Without a doubt, the present plaintiff too has standing to challenge the existence of the four private caveats on the four properties.

The Defendant Has No Caveatable Interest

A caveat is filed for the purpose of preserving the *status quo* of the parties pending resolution by the court. It is to preserve the *status quo* of the contending parties that the process of registration is suspended until conflicting claims to the title or an interest in the land have been resolved (*Damodaran v. Vasudeva* [1974] 1 MLJ 128 at 129). Under the torrens system, no interest in land can be legally created until registration has been effected. The fact that there is a possibility that a subsequent claim to a registrable interest may be registered thereby defeating the prior claim to a registrable interest in the same land, makes it expedient that a caveat should be lodged. Once a caveat is entered it will, in law, restrain any further dealings with the land in question.

An Act of entering a caveat is always unilateral in nature. The caveat is a signal to the whole world at large, so to speak, that the caveator has a claim to an alleged interest in the land (*United Malayan Banking Corp Bhd v. Goh Tuan Laye & Ors* [1976] 1 MLJ 169 at 170; *Ling Tee Huah Credit & Leasing Sdn Bhd & Ors v. Lii Tat Credit Mortgage Sdn Bhd & Anor* [1990] 1 MLJ 58 at 61 and *Hasan bin Sui & Anor v. Ban Ling Sdn Bhd & Ors* [1992] 3 CLJ 1428 at 1432). The caveat too prohibits subsequent dealings with the land or interest therein (*Macon Engineers Sdn Bhd v. Goh Hooi Yin* [1976] 2 MLJ 53 at 55; *Registrar of Titles, Johore v. Temenggong Securities Ltd* [1976] 2 MLJ 44 at 46; *Ismail bin Mohamad v. Haji Yahya & Ors* [1988] 2 MLJ 185 at 188; *Woon Kim Poh v. Sa'amah bte Hj Kasim* [1987] 1 MLJ 400 at 402; *Malayan United Bank Bhd v. Ngu Ding Yiing & Anor* [1992] 3 CLJ 1460 at 1463 and *Hasan bin Sui & Anor v. Ban Ling Sdn Bhd & Ors (supra))*. Lastly,

it may also be said that the purpose of the entry of the caveat is simply to preserve the *status quo* of the conflicting parties pending the hearing before the court (*Registrar of Titles, Johore v. Temenggong Securities Ltd (supra)).* A word of warning must be sounded to all would be caveators. It is this. The entry of a caveat does not enhance the caveator's interest or claim to an interest in the land (*Ng Kheng Yeow v. Chiah Ah Foo & Ors* [1987] 2 MLJ 330 at 331; *Bank of Tokyo v. Mohd Zaini bin Arshad (Maria Pragasam, Intervener)* [1991] 3 MLJ 50 at 55; *Mercantile Bank Ltd v. Official Assignee of the Property of How Han Teh* [1969] 2 MLJ 196 at 197; *Haroon v. Nik Mah* [1951] MLJ 209 at 211; *Chin Cheng Hong v. Hameed & Ors* [1954] MLJ 169 at 170 and *Macon Engineers Sdn Bhd v. Goh Hooi Yin (supra)),* nor does it create a legal interest in the land in question (*Chua Hee Hang v. QBE Supreme Insurance Bhd* [1990] 1 MLJ 480 at 483; *United Malayan Banking Corp Bhd v. Goh Tuan Laye & Ors (supra)*; *Ling Tee Huah Credit & Leasing Sdn Bhd & Ors v. Lii Tat Credit Mortgage Sdn Bhd & Anor (supra)*; *Hasan bin Sui & Anor v. Ban Ling Sdn Bhd & Ors (supra)* and *Lai Chon Foo @ Lai Chan Foo v. KN Wong (M) Sdn Bhd* [1994] 1 CLJ 523 at p. 525).

A caveator intending to enter a private caveat will do so under s. 324(1) of the NLC. Caveatable interests have been held to exist in the following situations:

(1) an assignee of a joint venture agreement to develop a piece of land is said to have an equitable interest and has the right to lodge a private caveat: *Wazuraiyah bte Mohamed v. Megat Najmuddin & Ors* [1986] 2 MLJ 379 at 382.

(2) the purchaser who has a beneficial interest after having paid the full purchase price under a sale and purchase agreement (*Su Meu Ging v. Philip Yong Khiam Poon & Ors and other appeals* [1988] 3 MLJ 86 at 89).

(3) the interest of the assignee under the agreement for the sale and purchase of land (*Tan Suan Heoh v. Lim Teck Ming & Ors* [1987] 2 MLJ 466).

(4) the right that accrues under a contract for the sale of land (*Macon Engineers Sdn Bhd v. Goh Hooi Yin (supra)*; *Ong Chat Pang & Anor v. Valliappa Chettiar* [1971] 1 MLJ 224 at 230; *Neo Son Tong Realty Sdn Bhd v. Kee Ba Tee @ Kee Seng Kiang* [1987] 1 CLJ 207 at 212; and *Lew Choon Chan v. Pentadbir Tanah Daerah & Anor* [1992] 1 CLJ 687).

(5) registration of the title in the name of a third party raises serious questions to be tried (*Kumpulan Sua Betong Sdn Bhd v. Dataran Segar Sdn Bhd*

[1992] 1 MLJ 263; *Ker Chee Chuan v. Katlyn Enterprise (M) Sdn Bhd* [1991] 1 MLJ 98 and *Guan Wee Keang v. Gan Ah Ter* [1986] 1 CLJ 557 at 559).

(6) an equitable chargee who has a lien in equity (*Standard Chartered Bank v. Yap Sing Yoke & Ors* [1989] 2 MLJ 49 at 53);

(7) in a binding contract, there is an option to purchase incorporated therein (*Sing Lian Express Sdn Bhd v. Soh Kim Tee* [1974] 2 MLJ 24 at 25); and

(8) joint venture with a non-Malay for development of Malay reservation land, that non-Malay has a caveatable interest (*RAP Nathan v. Haji Abdul Rahman bin Haji Yusoff & Ors* [1980] 1 MLJ 248).

The list is not exhaustive and it is not closed. It goes on ad infinitum. Under s. 323(1)(b) of the NLC a private caveat may also be entered by a beneficiary under any trust where the land or interest in the land is the trust property (*Lee Brothers Plantation & Realty (M) Sdn Bhd v. Lee Yeow Teng* [1991] 1 CLJ 133 at 134). Even where the beneficiary is a minor, a private caveat is entered by the guardian or next friend (s. 323 (1)(c) of the NLC). So long as the private caveat is validly entered and so long as it continues in force, the registration, endorsement or entry on the register document of title thereto is totally prohibited. In the context of the present case, it is appropriate to refer to the case of *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 3 MLJ 345 at 358 where the Federal Court disapproved the view expressed by Mohd Azmi SCJ in *Tan Heng Poh v. Tan Boon Thong & Ors* [1992] 2 MLJ 1 and chose to follow the decision of the earlier Federal Court case of *N. Vangedaselam v. Mahadevan & Anor* [1976] 2 MLJ 161 at 163 which laid down the following principle of law: a person who claims a registrable interest in a specific portion of land may caveat the whole land provided that the effect of the caveat is expressly limited only to that specific portion.

So much for the law. Now to the heart of the matter. The defendant's alleged caveatable interest was clearly stated in Form 19B dated 8 June 1995 as seen at exhs. "TKC 8" to "TKC 11" of encl. 2 and that Form 19B complied with the format as set out in the NLC under s. 323 thereof. In Form 19B, the defendant in order to justify his interest in the four properties said that the last will dated 16 January 1985 had been revoked by deceased Tan Sai Geok's marriage to the defendant on 24 April 1986 pursuant to s. 12 of the Wills Act 1959 and that left the defendant to be the sole beneficiary of the estate of Tan Sai Geok. But in encl. 9, the defendant affirmed an affidavit on

8 December 1998 and filed on the same date and in that very affidavit, the defendant advanced three main reasons for filing the four private caveats on the four properties. These three main reasons may be stated compendiously as follows:

(1) the defendant and the two children by the deceased Tan Sai Geok (f) were said to be entitled to the estate of the deceased under and in pursuance of the Inheritance (Family Provision) Act 1971 (see the averment at para. 15 of encl. 9).

(2) (a) The letter of authority dated 20 February 1989 contains a forged signature of the deceased Tan Sai Geok (f) (see the averments at paras. 10, 11, 13(g) of encl. 9).

(b) The letter of authority as alluded to is said not to be a codicil (see the averment at para. 13(e) of encl. 9).

(3) It was said that under s. 12 of the Wills Act 1959, the last will dated 16 January 1985 would automatically be revoked following the deceased Tan Sai Geok's (f) marriage to the defendant on 24 April 1986. It was also said that by virtue of the Distribution Act 1958, the defendant and his two children including the deceased's mother who was alive at the time of the deceased's demise were all entitled as beneficiaries to the estate of Tan Sai Geok (f) (see the averment at para. 8 (ii) of encl. 9).

I will now examine briefly, these three main reasons separately.

First Reason

There was no substance at all under this category. It was a non-issue and carried no weight at all for the following reasons:

(a) Section 3(2)(a) of the Inheritance (Family Provision) Act 1971 enacts clearly that the maintenance of the defendant terminates upon his re-marriage. There was evidence as seen in exh. "TKC 13B" of encl. 11 to the effect that the defendant has since married Lee Kiau Tee (f) on 2 March 1991 – the extract of the marriage certificate would certainly put the defendant in his correct place and put an end to any speculation of the defendant's right under the Inheritance (Family Provision) Act 1971.

(b) Section 4 of the Inheritance (Family Provision) Act 1971 sets the time frame. It limits any application for maintenance to be made within six months from the date on which representation in regard to the deceased Tan Sai Geok's (f) estate was first taken out. Take into account the following scenario: if the date on which representation in regard to the deceased Tan Sai Geok's (f) estate was first taken was said to be on

28 July 1997, which happened to be the date where the grant of probate was granted, then the defendant would be out of time to make the s. 5 maintenance order (under the Inheritance (Family Provision) Act 1971). The delay would be 1 year 9 months 23 days calculated from 28 July 1997 to 21 May 1999. On the other hand, if the date on which representation in regard to the deceased Tan Sai Geok's (f) estate was first taken out was said to be based on the date of the filing of the petition for the grant of probate by the plaintiff and that would be on 1 August 1994, then there was a lapse of 4 years 9 months 20 days calculated from 1 August 1994 to 21 May 1999. Bluntly put, the defendant was surely out of time to make any application for a maintenance.

(c) This first reason was not stated as a ground to justify the lodgement of the private caveat in Form 19B. Gopal Sri Ram JCA in *Goh Paik Swan v. Ng Choo Lum* [1996] 3 MLJ 437, speaking for the Court of Appeal had this to say on the same subject matter as seen at p. 445 to p. 446 of the report:

> Here is a case of a caveator entering his caveat upon one ground and later, on finding that that ground was unsustainable, seeking to sustain the caveat on some other alternative ground not stated in Form 19B. This, quite apart from being impermissible, also demonstrates the hopelessness of the caveator's claim to the titles.

Since the first reason was different and inconsistent with the ground stated in Form 19B, I hold and it was my judgment that the first reason as advanced by the defendant in para. 15 of encl. 9 was a mere embellishment, an afterthought that was born out of despair. The first reason did not disclose a serious question meriting a trial. Furthermore, there was no suit filed by the defendant for the purpose of exerting his alleged right as provided by the Inheritance (Family Provision) Act 1971.

Second Reason

As alluded to earlier, there was the last will dated 16 January 1985 and the letter of authority dated 20 February 1989. Section 2(1) of the Wills Act 1959 defines a will as:

> a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a codicil and an appointment by will or by writing in the nature of a will in exercise of a power and also a disposition by will or testament of the guardianship, custody and tuition of my child.

Section 5 of the Wills Act 1959 spells out clearly the characteristics of a valid will in the following terms:

(a) it must be in writing (s. 5(1) of the Wills Act 1959);

(b) it must be signed by the testator in the presence of two witnesses who shall subscribe the will in the presence of the testator (s. 5(2) of the Wills Act 1959);

(c) it shall be apparent on the face of the Will that the testator intended to give effect by his signature to the writing signed as his Will (s. 5(2) of the Wills Act 1959).

Now, in so far as the letter of authority dated 20 February 1989 was concerned, it specifically:

(a) appoints the plaintiff Tan Kok Chuan as the executor and trustee;

(b) refers to the last will dated 16 January 1985;

(c) revives the last will dated 16 January 1985;

(d) reiterates that the deceased Tan Sai Geok's (f) half undivided share in each of the four properties to be held solely and for the sole benefit of the beneficiary named in the last will and that would be the plaintiff Tan Kok Chuan; and

(e) mentions that that is the "last will" at the signature clause thereto.

Furthermore, the letter of authority dated 20 February 1989 was duly signed by the deceased Tan Sai Geok (f) in the presence of two witnesses, namely Tan Kok Kwee and Tan Sai Kim (f). It would be interesting to note that Tan Kok Kwee affirmed an affidavit on 25 November 1998 as seen in encl. 7 and there he deposed that he was a witness to the deceased Tan Sai Geok's (f) signature on 20 February 1989 and that the letter of authority was made when the deceased was in the pink of health. Tan Kok Kwee further deposed in encl. 7 as to the intention of the deceased Tan Sai Geok (f) in making that letter of authority. Enclosure 7 contained eight paragraphs and it would be ideal to reproduce them as they make for interesting reading:

1. I am the second brother of the deceased Tan Sai Geok (F) and the facts deposed to herein are to the best of my knowledge and belief true in all respects save otherwise stated.

2. I am one of the witnesses to the letter of authority and codicil of Tan Sai Geok (F) deceased, dated 20 February 1989. A copy is annexed herewith and marked as exh. 'TKK-1'.

3. I witness Tan Sai Geok (F) deceased signing (the) said letter of authority and codicil before I and Tan Sai Kim (F) my second sister signed the same on 20 February 1989.

4. At the time the said letter of authority and codicil were prepared, my said oldest sister Tan Sai Geok (F) deceased mentioned to me that she did not want to and was too busy to attend any of the family meetings regarding my father's estate left behind for us including her half share in the said four pieces of land.

5. Tan Sai Geok (F) deceased, did indicate to us that as she was then married, she did not need to have the said family properties and would rather that Tan Kok Chuan have those family properties instead.

6. She was very close to Tan Kok Chuan. She was nine (9) years older than Tan Kok Chuan who was the youngest in his family. She in fact treated him as her favourite brother. This was no secret to the rest of us.

7. Tan Sai Geok (F) deceased did indicate to me at the material time that she would rather that Liew Nam Foong do not know about her said properties. She rather leave the family properties for us being male members of the family to decide on the replanting etc of the said plantations.

8. Tan Sai Geok (F) deceased was not sick at the time she executed the said letter of authority and codicil on 20 February 1989.

and it would be apparent that both Tan Kok Kwee and Tan Sai Kim (f) were no strangers to the deceased Tan Sai Geok (f) as they are related by blood. Tan Kok Kwee being the second brother while Tan Sai Kim (f) being the second sister to the deceased Tan Sai Geok (f).

Tan Sai Kim (f) too affirmed an affidavit on 25 November 1998 as can be seen in encl. 8 and there she deposed to, *inter alia*, the following facts:

(a) that she was the one who prepared the last will dated 16 January 1985 and the letter of authority dated 20 February 1989;

(b) that the deceased Tan Sai Geok (f) understood what she was signing;

(c) that the intention of the deceased Tan Sai Geok (f) in making the last will and the letter of authority was pure and simple and in the words of Tan Sai Kim (f) as seen in encl. 8 thereof:

7. The reason for her executing the said Last Will after the half share in (the) said four (4) pieces of land were vested in her as beneficiary and registered owner on 31.3.1984, was simple. She was not married at the time and felt that she may not get married being about aged 35 years at the material time. Having been so advised by the late

A.L. Looi, she of her own choosing decided to will all her properties to my youngest brother Tan Kok Chuan who was her favourite brother.

7:1. Tan Sai Geok (F) is very close with my said brother Tan Kok Chuan.

7:2. They are so close that even after she married Liew Nam Foong and had given birth to 2 children *viz*. Liew San Wei and Liew Wern Chu (F), she insisted that Tan Kok Chuan be the godfather of her son Liew San Wei.

7:3. Tan Sai Geok's (F) marriage to Liew Nam Foong was an arranged marriage. It was so arranged by one of my uncle(s). They married shortly after the said arrangement. Their courtship was a brief one.

7:4. In late 1988 and early 1989, Tan Sai Geok (F) deceased confided in me on several occasions about her married life. She had a couple of misunderstanding with Liew Nam Foong and felt unhappy. She told me that Liew Nam Foong always questioned her whether she inherited any property from her deceased father. She did not disclose anything to him.

7:5. In view of her unhappiness with Liew Nam Foong, she decided not to let him know and asked me to prepare the Letter of Authority cum Codicil as it must refer to the Last Will and is supplementary to it.

7:6. Tan Sai Geok (F) reiterated to me that she wanted the Last Will to be materialized and to be left as it is. But with new addition *viz.* that in view of the occasional family meetings held over the said family properties, she wanted Tan Kok Chuan to act on her behalf, while she was alive, as she did not want to attend (the) said meetings for fear that Liew Nam Foong would find out about the matter.

(d) that she had witnessed the signatures of the deceased Tan Sai Geok (f) and that of Tan Kok Kwee on those documents – referring no doubt to the last will and the letter of authority.

In my judgment, the affidavits of both Tan Kok Kwee and Tan Sai Kim (f) went a long way to support the plaintiffs' application in encl. 3. It demolished, once and for all, the allegation that the letter of authority dated 20 February 1989 contained a forged signature of the deceased Tan Sai Geok (f). It was wrong to say that the letter of authority was not a codicil because under s. 2 of the Wills Act 1959, a will must include a codicil.

It would be germane, at this juncture, to reproduce the last will dated 16 January 1985 and the letter of authority dated 20 February 1989. I will now reproduce the last will which was worded as follows:

LAST WILL

THIS IS THE LAST WILL AND TESTAMENT of me TAN SAI GEOK (NRIC No. 7955995) of No. 53-F, Jalan Indra Putra, 80300, Johor Bahru, Johor.

1. I do hereby revoke all former WILLS and TESTAMENTARY dispositions made by me and declare this to be my last will.

2. I APPOINT my BROTHER TAN KOK CHUAN (NRIC No. 5192440) to be the Executor and Trustee of this my WILL.

3. I DEVISE and BEQUEATH to my Trustee TAN KOK CHUAN (NRIC No. 5192440) for his sole benefit.

   a) GERAN MUKIM No. GM 182 for LOT 95, MUKIM OF PLENTONG.

   b) GERAN MUKIM No. GM 183 for LOT 100, MUKIM OF PLENTONG.

   c) GERAN MUKIM No. GM 184 for LOT 102, MUKIM OF PLENTONG.

   d) GERAN MUKIM No. GM193 for LOT 101, MUKIM OF PLENTONG.

4. I DEVISE and BEQUEATH all that divided one half (1/2) share of land held under GERAN MUKIM No. 182 for Lot 95, Lot 100, Lot 184 and Lot 101, MUKIM OF PLENTONG, JOHOR BAHRU, JOHOR to the person as stated hereunder.

   a) TAN KOK CHUAN
   (NRIC No. 5192440)

5. I DEVISE AND BEQUEATH all my residuary estate whatsoever and wheresoever unto my Trustee UPON TRUST (after the payment of such my just debts, funeral and testamentary expenses) to sell call in and convert the same into money (but so that my Trustee shall have power to postpone such sale as he shall in his absolute discretion think fit without being liable to loss thereby) AND TO HOLD any proceeds thereon and ready money for own benefit absolutely.

6. I direct that all persons not expressly mentioned in this WILL shall have no claims whatsoever to any of my estate whatsoever and wheresoever.

7. IN the interpretation of this my WILL the expression “my Trustee” shall, where the context so permits mean the TRUSTEE hereof whether original or substituted and if there shall be no TRUSTEE shall, where the context

so permits include the persons empowered by statute to execute or perform any power or trust hereby by statute conferred upon my Trustee and willing or bound to exercise or perform the same.

IN WITNESS WHEREOF I have hereunto set my hands this 16th JANUARY 1985.

SIGNED by the abovenamed testatrix as and for her LAST WILL in the presence of both being present at the same time who at her request in her presence and in the presence of each other have hereunto subscribed our names as witnessed:-	)	Sgd. (Illegible) ... TAN SAI GEOK (NRIC No. 7955995)

Sgd.(Illegible) Witness: ... Name: TAN KOK ENG NRIC No.: 8031650	Sgd.(Illegible) Witness: ... Name: TAN SOY YONG NRIC No.: 5599673

The letter of authority was worded in this way:

LETTER OF AUTHORITY

I, TAN SAI GEOK (NRIC No. 7955995) of No. 53-F, Jalan Indra Putra, Johor Bahru, Johor hereby APPOINT MY BROTHER TAN KOK CHUAN (NRIC No. 5192440) of No. 53-F, Jalan Indra Putra, Johor Bahru, Johor to be my EXECUTOR AND TRUSTEE on my RESIDUARY ESTATES and REPRESENT me in the ESTATES MEETING on the FUTURES PLANNING with FULL AUTHORITY AND CONSENT given in this LETTER.

1. I DEVISE AND BEQUEATH to my TRUSTEE TAN KOK CHUAN with FULL POWER AND AUTHORITY to execute and administer all my RESIDUAL ESTATES to sell, call in, convert, replanting the same into money (but so that my TRUSTEE shall have FULL POWER AND AUTHORITY to set upon or postpone such sale as he shall in his absolute discretion think fit without being liable to loss thereby) And to Hold any proceeds thereon and ready money for his own benefit absolutely.

2. I DEVISE AND BEQUEATH all that divided one half (1/2) share of land held under Geran Mukim GM 182 for lot 95, GM 183 for lot 100, GM 184 for lot 102 and GM 193 for lot 101, Mukim of Plentong, Johor Bahru, Johor to the person as stated hereunder for his SOLE BENEFIT as stated in my LAST WILL dated 16th January1985 which I have made and I sincerely expressed it (LAST WILL) as VALID as TODAY AND

FOREVER and I direct that all persons not expressly mentioned in MY LAST WILL shall have no claims whatsoever to any of my ESTATES whatsoever and wheresoever.

2 a) NAME: TAN KOK CHUAN
NRIC: 5192440

In witness whereof I have hereunto set my hands this 20th day of FEBRUARY 1989.

SIGNED by the abovenamed testatrix as and for her LETTER OF AUTHORITY AND LAST WILL in the presence of both being present at the same time who at her request in her presence and in the presence of each other have hereunto subscribed our names as witnessed :-	Sgd. (Illegible) ... TAN SAI GEOK (NRIC No. 7955995)

Witness: Sgd. (Illegible) Name: TAN KOK KWEE NRIC No: 8139052	Witness: Sgd. (Illegible) Name: TAN SAI KIM NRIC No: 4884958

It was quite obvious that the marriage of the deceased Tan Sai Geok (f) with the defendant did not alter the stand of the deceased at all. She was devising and bequeathing her one half share in each of the four properties to no one else except to Tan Kok Chuan. The language employed in the letter of authority was very clear and unambiguous. It was the intention of the deceased Tan Sai Geok (f) to revive the last will dated 16 January 1985 and this was made clear by the language employed in paragraph 2 of the letter of authority as reproduced above. Buckley J in *Re James's Will Trusts* [1962] Ch 226 at p. 233 to p. 234 once remarked that the best approach to construe a document would be to:

> ... first to consider the circumstances of the particular case and to try to discover the testator's intention without reference to authority, and thereafter to see whether a study of the reported decisions suggests any reasons for modifying whatever conclusion one may have reached.

In my considered view, the last will dated 16 January 1985 and the letter of authority dated 20 January 1989 must be examined by looking at those documents in its entirety. From those documents, the intention of the parties can readily be discovered by looking at the expressions which the parties have employed. The expressions used in the two documents were simple and straightforward. The need to look at the document in order to ascertain its meaning found support in a number of old vintage authorities. For a start, I shall refer to what Lord Wensleydale said in *Monypenny v. Monypenny* [1861] 9 HLC 114 at p. 146:

> ... the question is not what the parties to a deed may have intended to do by entering into that deed, but what is the meaning of the words used in that deed: a most important distinction in all cases of construction and the disregard of which often leads to erroneous conclusions.

Next, would be the case of *Simpson v. Foxon* [1907] P.54 at p. 57 where Sir Gorrell Barnes P in a testamentary suit said:

> But what a man intends and the expression of his intention are two different things. He is bound and those who take after him are bound by his expressed intention. If that expressed intention is unfortunately different from what he really desires, so much the worse for those who wish the actual intention to prevail.

Then, there was an old case by the name of *Kidder v. West* [1684] 3 Lev 167 where the court there observed:

> The court cannot understand the true intent of the indenture but only by the words of the indenture.

Next, it would be the case of *Re Meredith, ex p. Chick* [1879] 11 Ch D 731 at p. 739 where Brett LJ aptly said:

> I am disposed to follow the rule of construction which was laid down by Lord Denman and Baron Parke ... They said that in construing instruments you must have regard, not to the presumed intention of the parties, but to the meaning of the words which they have used.

In *Smith v. Lucas* [1881] 18 Ch D 531 at p. 542, Jessel MR observed:

> One must consider the meaning of the words used, not what one may guess to be the intention of the parties.

Romilly MR in *Beaumont v. Marquis of Salisbury* [1854] 19 Beav 198 at p. 206 spoke of the method of construing the deed in these words:

> ... court deals with a deed according to the clear intention of the parties appearing in the four corners of the deed itself.

What is of importance is this: the court must not substitute its own ideas of what the parties meant by supplying words into the document. Where the words are clear and plain like the last will dated 16 January 1985 and the letter of authority dated 20 February 1989, there would not be any difficulty at all in construing them. As Willes CJ said in *Smith v. Packhurst* [1742] 3 Atk 135 at p. 136:

a Another maxim is 'that such a construction should be made of the words in a deed, as is most agreeable to the intention of the grantor; the words are not the principal things in a deed, but the intent and design of the grantor'.

An interesting case would be that of *Re Alcock deceased* [1945] 1 Ch 264. In that case a testatrix had bequeathed the residue of her property to be divided b equally between nephew and "the three children of my cousin." Unfortunately, the cousin was not named and that cousin had four children all surviving the testatrix and they were all on friendly terms with her. The court there held that it was the testatrix's intention to benefit all the children of the cousin.

c Now, applying these principles of construction to the present case, it was my judgment that the clear unambiguous words employed in the letter of authority dated 20 February 1989 clearly showed that it was meant to revive the last will dated 16 January 1985 and it was also my judgment that the intention of the deceased Tan Sai Geok (f) that the undivided half share in each of the four properties should be devised and bequeathed to Tan Kok Chuan.

d

Reverting back to the issue of the forged signature that purportedly appeared in the letter of authority, it was purely based on the defendant's belief that the defendant "is familiar with the deceased's signature and the defendant verily believed that the deceased's signature in the letter of authority is a e forgery" (para. 11 and para. 13(g) of encl. 9). The defendant too brought to the fore the purported discrepancy between the signature of the deceased in the last will which differ from that of the letter of authority by merely comparing the two signatures. But alas, the alleged discrepancy has not been proven by an expert witness's evidence and that discrepancy can also be f explained away by comparing the signature of the deceased Tan Sai Geok (f) in the letter of authority with that of the marriage certificate (exh. "TKC 13A" of encl. 6) – the comparison would show that the signature was the same. It must not be forgotten that both Tan Kok Kwee and Tan Sai Kim (f) bear witness to the deceased Tan Sai Geok's (f) signing of the letter of authority dated 20 February 1989. In my judgment, the defendant not being an expert g witness on handwriting did not discharge the burden of proving fraud or forgery on the part of the plaintiff Tan Kok Chuan. Moreover, the issue of fraud was not alluded to in Form 19B. It was not the ground relied upon by the defendant to support his alleged caveatable interest in Form 19B.

h The burden of proving fraud on the part of the defendant was on the basis of beyond reasonable doubt, a burden which the defendant failed to discharge (*Tai Lee Finance Co Sdn Bhd v. Official Assignee & Ors* [1983] 1 MLJ 81

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FC which cited favourably *Saminathan v. Pappa* [1981] 1 MLJ 121, 123). Just like the respondents in *Tai Lee Finance Co. Sdn Bhd v. Official Assignee & Ors (supra)* who relied on affidavit evidence to establish fraud, the defendant in the present case also relied on affidavit evidence to prove fraud but in an application for the removal of a private caveat, the court must be guided by what was alluded to in Form 19B.

Third Reason

This was raised in Form 19B but it was totally a non-issue because s. 16 of the Wills Act 1959 provides for the revival of revoked wills. Since the last will dated 16 January 1985 was revived by the letter of authority dated 20 February 1989, the defendant's argument that the last will was revoked by his marriage to the deceased Tan Sai Geok (f) was entirely without merit. Even if it was argued that the last will dated January 16, 1985 was not revived by the letter of authority dated 20 February 1989 – which was not the case here, the letter of authority was capable of standing on its own as it clearly set out the name of the beneficiary and the subject matter of the estate. The defendant's claim in Form 19B was completely untenable and unsustainable because the letter of authority was executed after the deceased's marriage to the defendant. As the sole beneficiary of the estate of the deceased Tan Sai Geok (f), the plaintiff has the right to wind up the deceased's estate in compliance with the deceased's intention as spelt out in the letter of authority dated 20 February 1989. Thus, the wrongful private caveats on the four properties ought to be removed forthwith to allow the plaintiff to wind up the deceased's estate. This was my judgment and I so hold accordingly.

The Civil Suit Filed On 15 May 1999 In The Johor Bahru High Court

As I said this can be seen in exh. "LNF-1" of encl. 12 where the statement of claim at paras. 11 and 12 therein showed the allegations and contentions of the defendant, namely:

(i) that the alleged signatures of the deceased Tan Sai Geok (f) on the last will dated 16 January 1985 and in the letter of authority dated 20 February 1989 were not the true signatures of the deceased; and

(ii) that the alleged signatures of the witnesses in the persons of Tan Kok Eng and Tan Soy Yong of the one part and Tan Kok Kwee and Tan Sai Kim (f) of the other part appearing in the last will dated 16 January 1985 and in the letter of authority dated 20 February 1989 respectively were not their true signatures.

But, alas, these alleged contentions were no where reflected in Form 19B. They can be construed and classified as fresh new grounds and they certainly cannot be used to resist the plaintiffs' application in encl. 3.

In my judgment there were no serious questions to be tried. The authenticity of the last will dated 16 January 1985 and the letter of authority dated 20 February 1989 can never be doubted. The affidavit evidences of both Tan Kok Kwee and Tan Sai Kim (f) put encl. 3 within the realm of the plaintiffs. Since I have held that there were no serious questions to be tried, the issue of the balance of justice did not arise at all.

Laches

Lord Selborne in *Lindsay Petroleum Co v. Hurd* [1874] LR 5 PC 221 at 239 succinctly said:

> The doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has by his conduct done that which might fairly be regarded as an equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material.

The doctrine of laches has developed over the years. The court will be reluctant to grant relief to stale claims: vigilantibus et non dormientibus lex succurrit. The party who has been dilatory in the prosecution of his claim and has acquiesced in the wrong done to him is said to be guilty of laches and is accordingly barred from obtaining relief although his claim may not be curtailed by the statute of limitation. It pays to be diligent and it also pays to prosecute one's claim with promptitude. In *Plimmer Bros. v. St. Maur* [1906] 26 NZLR 294, Stout CJ of New Zealand had occasion to consider an application to remove a caveat, and his Lordship had this to say in the context of the defendant who had commenced no action against the plaintiff in relation to the land where the caveat was lodged:

> It was his duty to commence an action promptly if he considered himself entitled to specific performance …. . Here nothing was done for nearly sixteen months, and then a caveat was lodged. More than a month has elapsed since then, and still no action has been commenced. In my opinion an action for specific performance under such circumstances would be hopeless, and a caveat under such circumstances must be deemed vexatious …. in my opinion, to prevent a man dealing with his property after such a

long delay is so inequitable that the court will not lend its assistance to such a proceeding.

Now, was there inordinate and inexcusable delay on the facts of the present case. To recapitulate, the following salient facts must be highlighted:

(1) 21 May 1989, the deceased Tan Sai Geok (f) died.

(2) On or about 24 April 1995, the defendant came to know of the existence of the deceased's estate comprising of the one half undivided share in each of the four properties (para. 6(i), (iii) of encl. 9).

(3) On 17 May 1995, a search was made at the land office pertaining to the four properties by the defendant (para. 7(i) of encl. 9).

(4) On 15 June 1995 or thereabouts, the defendant lodged those private caveats (para. 7(ii) of encl. 9).

(5) On 30 October 1996, the defendant filed the originating motion no: 25-48-95 on 25 September 1995 in the Johor Bahru High Court; somehow, the defendant had that originating motion withdrawn.

(6) On 29 July 1997, the plaintiff rectified his application and was subsequently granted the grant of probate to the deceased Tan Sai Geok's (f) estate.

(7) On 13 August 1998, the present originating summons to remove the private caveats lodged by the defendant was filed and it was served on the defendant on 2 November 1998.

(8) On 15 May 1999, the defendant filed the Johor Bahru High Court case as alluded to earlier in order to revoke the plaintiffs' grant of probate .

(9) Between 30 October 1996 (the date for the striking out of the defendant's originating motion no: 25-48-95) to 15 May 1999 (the filing of the Johor Bahru High Court case as alluded to earlier), the lapse of time would be two years six months and 15 days.

By way of a comparison, would be the case of *Teo Ai Choo v. Leong Sze Hian* [1982] 2 MLJ 12, where the delay of 11 months was held to be inordinate. In *Paya Terubong Estates Sdn Bhd v. Pusaka Warisan Sdn Bhd* [1998] 2 CLJ 909, the Court of Appeal was of the view that proceedings must be commenced timeously. The delay in the present case must be construed adversely against the defendant. The private caveats must be removed forthwith.

a ***Conclusion***

For the reasons adumbrated above, I gave judgment to the plaintiffs as prayed for in encl. 3 prayer (A) (the four private caveats over the four properties to be removed forthwith), prayer (B) (costs of the application), prayer (C) (damages for wrongful caveating to be assessed by the Senior Assistant Registrar), and prayer (E) (with liberty to apply).

b

c

d

e

f

g

h

i